

## END-USER LICENSE AGREEMENT

### LICENSE FOR FREIGHT CONTROL SYSTEM SOFTWARE

#### LICENSEE:

Ralph Stussi  
Fleming Foods, Inc.  
91-315 Hanua Street  
Kapolei, Hawaii 96707

#### LICENSOR:

Wayne Berry  
P.O. Box 549  
Haleiwa, Hawaii 96712

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  - b. **Server Software and Database.** At any given time, you may install one copy on a single computer.

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- c. Client Software, Screens, Reports, "Glue Logic" or Integration Code. At any given time, you may install up to one copy on up to ten (10) separate computers.
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LICENSOR: Wayne Berry

  
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Date

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## **ADDENDUM TO END-USER LICENSE AGREEMENT**

### **ADDENDUM FOR FREIGHT CONTROL SYSTEM SOFTWARE**

1. In exchange for Wayne Berry (LICENSOR) granting this EULA to Fleming Foods, Inc (LICENSEE), LICENSEE agrees to employ all former API employees of record date (September 1, 1999) beginning November 1, 1999 for a period of not less than 1 year and at their former or better pay scale and benefit package. This employment agreement shall not include Jack Borja. LICENSOR will not be in breach of this agreement if any of the "former API employees" quit or create a disciplinary condition that requires dismissal from LICENSOR's employ.
2. In exchange for LICENSOR granting LICENSEE this EULA, LICENSEE agrees to indemnify Jack Borja from any and all personal liabilities associated with the former API / Fleming Partnership, including but not limited to the 4 Trucks leased specifically to facilitate shipments to LICENSEE, the forklifts and ancillary equipment leased to facilitate shipments to LICENSEE, the computer specifically leased to facilitate shipments to LICENSEE and any legal actions taken to protect the API / Fleming Partnership. LICENSOR shall use the TRW credit reporting service to monitor the enforcement of this clause. If a bad credit report is made to TRW in connection with this former API / Fleming Partnership and cannot be remedied and removed within 60 days, LICENSEE will have violated this EULA.
3. LICENSOR will not be bound by any prior or past agreements that may restrict LICENSOR's legal remedies. Specifically, LICENSOR is not bound by any restrictions to any form of arbitration with the LICENSEE and may specifically pursue any and all legal remedies in the appropriate court including lawsuits and injunctive relief. Effective November 1, 1999, this agreement supercedes all prior written and oral agreements.
4. The SOFTWARE PRODUCT may only be used by LICENSEE in the State of Hawaii, within the LICENSEE's facility.
5. LICENSEE agrees that LICENSEE has been granted access to proprietary intellectual property and trade secrets contained in the SOFTWARE PRODUCT and may not replace this SOFTWARE PRODUCT with another custom system of comparable design or functionality without the burden of proving that the replacement custom software was developed without the

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6. LICENSEE may not use or create any additional I/O subsystems (Screens, Databases, Reports, "Glue Logic" or Integration Code) that are intended for use with or in conjunction with this SOFTWARE PRODUCT.
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Wayne Berry  
LICENSOR: Wayne Berry

10/29/99  
Date